



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

November 6, 2007

Mr. David Preston  
Great Eastern Mussel Farms  
P. O. Box 141  
Long Cove Road  
Tenants Harbor, ME. 04860

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0023124  
Maine Waste Discharge License (WDL) #W003993-5P-D-R  
**Final Permit**

Dear Mr. Preston:

Enclosed please find a copy of your **final** MEPDES permit/WDL which was approved by the Department of Environmental Protection. Please read the permit and its attached conditions carefully. You must follow the conditions in the order to satisfy the requirements of law. Any discharge not receiving adequate treatment is in violation of State Law and is subject to enforcement action.

Any interested person aggrieved by a Department determination made pursuant to applicable regulations, may appeal the decision following the procedures described in the attached DEP FACT SHEET entitled "*Appealing a Commissioner's Licensing Decision.*"

If you have any questions regarding the matter, please feel free to call me at 287-7693.

Sincerely,

Gregg Wood  
Division of Water Quality Management  
Bureau of Land and Water Quality

Enc.

cc: Denise Behr, DEP/CMRO  
Sandy Lao, USEPA

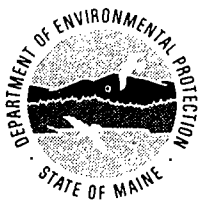
AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826  
RAY BLDG., HOSPITAL ST.

BANGOR  
106 HOGAN ROAD  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769-2094  
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STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STATE HOUSE STATION 17 AUGUSTA, MAINE 04333

DEPARTMENT ORDER

IN THE MATTER OF

GREAT EASTERN MUSSEL FARMS, INC.	)	MAINE POLLUTANT DISCHARGE
ST. GEORGE, KNOX COUNTY, MAINE	)	ELIMINATION SYSTEM PERMIT
FOOD/FISH PROCESSING FACILITY	)	AND
ME0023124	)	WASTE DISCHARGE LICENSE
W003993-5P-D-R	)	RENEWAL
APPROVAL		

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et seq. and Maine Law 38 M.R.S.A., Section 414-A et seq., and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered the application of GREAT EASTERN MUSSEL FARMS, INC. (GEMF hereinafter), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

GEMF has submitted a timely and complete application to the Department for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0023124/Department Waste Discharge License (WDL) #W003993-5P-C-R (permit hereinafter), that was issued by the Department on July 10, 2002 for a five-year term. The 7/10/02 permit authorized GEMF to discharge of up to 0.72 million gallons per day (MGD) of mussel and clam processing waste water and facility cleanup waste water and purge tank processing waste water to tidewaters of Long Cove, Class SB, in St. George, Maine.

**PERMIT SUMMARY**

Terms and conditions: This permitting action is carrying forward all the terms and conditions of previous permitting action with a few exceptions. This permit;

1. Eliminating limitations and monitoring requirements for total residual chlorine.
2. Establishing more stringent monthly average technology based mass limitations (617 lbs/day down to 430 lbs/day) for both biochemical oxygen demand (BOD and total suspended solids (TSS) based on pollutant loadings associated with the process waste waters only.

## CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated September 21, 2007 and subject to the Conditions listed below, the Department makes the following conclusions:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with State law.
3. The provisions of the State's antidegradation policy, 38 MRSA Section 464(4)(F), will be met, in that:
  - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
  - (c) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

**ACTION**

THEREFORE, the Department APPROVES the above noted application of GEMF, to discharge a daily maximum of 0.720 MGD of treated seafood processing waste waters, purge waters and facility clean up water to the tidewaters of Long Cove, St. George, Maine, Class SB, SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations including:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits," revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit expires five (5) years from the date of signature below.

DONE AND DATED AT AUGUSTA, MAINE, THIS 8<sup>TH</sup> DAY OF November, 2007.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

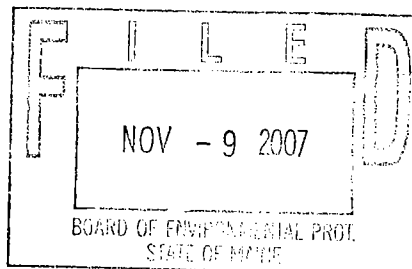
BY:

  
DAVID P. LITTELL, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application July 10, 2007.

Date of application acceptance July 17, 2007.



Date filed with Board of Environmental Protection \_\_\_\_\_

This Order prepared by Gregg Wood, Bureau of Land and Water Quality

W39935PD

11/5/07

**SPECIAL CONDITIONS****A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

Beginning upon the effective date of the permit, the permittee is authorized to discharge treated mussel and clam processing and facility cleanup waste water to the tidewaters of Long Cove in St. George from **OUTFALL #001**. Such discharges shall be limited and monitored by the permittee as specified below:

<b><u>Effluent Characteristic</u></b>	<b><u>Discharge Limitations</u></b>			<b><u>Monitoring Requirement</u></b>	
	<u>Monthly Average</u>	<u>Daily Maximum</u>	<u>Monthly Average</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
	(Quantity or as specified)		(Concentration)		
Flow [50050]	Report, MGD [03]	0.720 MGD [03]	---	Continuous [99/99]	Meter [MT]
Settleable Solids [00545]	---	---	Report (ml/L) [25]	5/Week [05/07]	Grab [GR]
Total Suspended Solids <sup>(1)</sup> [00530]	430 lbs/day [26]	Report lbs/day [26]	103 mg/L [19]	1/Week [01/07]	Comp-8 [08]
Biochemical oxygen demand <sup>(1)</sup> [00310]	430 lbs/day [26]	Report lbs/day [26]	103 mg/L [19]	1/Week [01/07]	Comp-8 [08]
Production <sup>(2)</sup> [00145]	Report lbs/day [26]	Report lbs/day [26]	---	5/Week [05/07]	Measure [MS]
pH (Std. Units) [00400]	The pH shall not be less than 6.0 or greater than 8.5 at any time.			1/Week [01/07]	Grab [GR]

*The italicized numeric values bracketed in the table above and table that follows are code numbers that Department personnel use to code the monthly Discharge Monitoring Reports (DMR's). Refer to footnotes below.*

## **SPECIAL CONDITIONS**

### **A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)**

#### Footnotes

**Sampling** -- Sampling and analysis must be conducted in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis shall be analyzed by a laboratory certified by the State of Maine's Department of Human Services. All sampling shall be representative of the discharge of process waste water and clean-up water after co-mingling with the purge waters.

All testing shall be conducted using methods that permit detection of a pollutant at existing levels in the effluent or that achieve the most current minimum reporting levels (RL) of detection as specified by the Department. All detectable analytical test results shall be reported to the Department including results which are detected below the Department's respective RL's. If the concentration result is at or above the respective RL's, the concentration shall be reported at that level. If applicable, the mass shall be calculated based on the detected concentration and the flow discharged for the day in which the sample was taken. If the analytical test result is below the respective RL's, the concentration result shall be reported as <X where X is the detection level achieved by the laboratory for that test. Because a mass cannot be calculated with a less than value, report less than the applicable permit mass limit.

- (1) **Total suspended solids (TSS) and biochemical oxygen demand (BOD)** – A composite sample consists of a minimum of four (4) grab samples collected at equal intervals during the an 8-hour processing period and combined proportional to the flow over the 8-hour processing time period or a sample continuously collected proportional to flow over the same time period.
- (2) **Production** - Is defined as the pounds of raw product processed during each day.

## **SPECIAL CONDITIONS**

### **B. NARRATIVE EFFLUENT LIMITATIONS**

1. The effluent shall not contain a visible oil sheen, foam or floating solids at any time which would impair the usage designated by the classification of the receiving waters.
2. The effluent shall not contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usage designated by the classification of the receiving waters.
3. The discharge shall not cause visible discoloration or turbidity in the receiving waters which would impair the usages designated by the classification of the receiving waters.
4. Notwithstanding specific conditions of this permit the effluent must not lower the quality of any classified body of water below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

### **C. TREATMENT PLANT OPERATOR**

The treatment facility must be operated by a person holding a minimum of a **Grade I** certificate (or Registered Maine Professional Engineer) pursuant to Title 32 M.R.S.A. §4171 *et seq.* All proposed contracts for facility operation by any person must be approved by the Department before the permittee may engage the services of the contract operator.

### **D. NOTIFICATION REQUIREMENT**

In accordance with Standard Condition D, the permittee shall notify the Department of any substantial change in the volume or character of pollutants being introduced into the waste water collection and treatment system. For the purpose of this section, notice regarding substantial change shall include information on:

- a. The quality or quantity of wastewater introduced to the waste water collection and treatment system; and,
- b. Any anticipated impact of the change in the quality or quantity of the waste water to be discharged from the treatment system.

### **E. UNAUTHORIZED DISCHARGES**

The permittee is authorized to discharge only in accordance with the terms and conditions of this permit and only from Outfall 001. Discharges of wastewater from any other point source are not authorized under this permit, but shall be reported in accordance with Standard Condition B(5) (Bypass) of this permit.



## **SPECIAL CONDITIONS**

### **F. OPERATIONS AND MAINTENANCE MANUAL**

This facility shall have a current written comprehensive Operation & Maintenance (O&M) Plan. The plan shall provide a systematic approach by which the permittee shall at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.

**By December 31 of each year, or within 90 days of any process changes or minor equipment upgrades**, the permittee shall evaluate and modify the O&M Plan including site plan(s) and schematic(s) for the waste water treatment facility to ensure that it is up-to-date. The O&M Plan shall be kept on-site at all times and made available to Department and EPA personnel upon request. **Within 90 days of completion of new and or substantial upgrades of the waste water treatment facility**, the permittee shall submit the updated O&M Plan to their Department inspector for review and comment.

### **G. SETTLING TANK & PURGE TANK MAINTENANCE**

To ensure that the settling tank and purge tanks are providing best practicable treatment and achieving satisfactory solid removal levels, the permittee shall maintain a revolving inspection and maintenance schedule for pumping out the solids in all tanks at the facility. GEMF shall be responsible for maintaining a log that documents the date of inspections, comments, observations of the solids content and color, odor, and foam level observed during each inspection as well as the quantity of solids removed from each tank. The logs must be kept current and available to the Department for inspection during normal business hours.

### **H. SCHEDULE OF COMPLIANCE**

**On or before January 31, 2008**, the permittee shall submit a written proposal to the Department for review and approval, to replace the existing paddlewheel type flow meter that measures the intake flow with a more accurate flow measuring device.

**On or before April 1, 2008**, the permittee shall install and have fully operational, a flow measuring device approved by the Department.

## **SPECIAL CONDITIONS**

### **I. MONITORING AND REPORTING**

Monitoring results obtained during the previous month shall be summarized for each month and reported on separate Discharge Monitoring Report Forms (DMR's) provided by the Department and **shall be postmarked by the thirteenth (13<sup>th</sup>) day of the month or hand-delivered to a Department Regional Office such that the DMR's are received by the Department by the fifteenth (15<sup>th</sup>) day of the month following the completed reporting period.** A signed copy of the DMR's and all other reports required herein shall be submitted, unless otherwise specified, to the Department's facility inspector at following address:

Department of Environmental Protection  
Central Maine Regional Office  
Bureau of Land & Water Quality  
Division of Water Quality Management  
State House Station #17  
Augusta, Maine 04333

### **J. RE-OPENER CLAUSE**

Upon evaluation of the tests results required by Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at anytime and with notice to the permittee, modify this permit to: (1) include effluent limits necessary to control specific pollutants or whole effluent toxicity where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded; (2) require additional monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

### **K. SEVERABILITY**

In the event that any provision or part thereof, of this permit is declared to be unlawful by a reviewing court, the remainder of the permit shall remain in full force and effect, and shall be construed and enforced in all aspects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court.

**MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
AND  
MAINE WASTE DISCHARGE LICENSE**

**FACT SHEET**

Date: **September 21, 2007**

PERMIT NUMBER: **ME0023124**  
LICENSE NUMBER: **W003993-5P-D-R**

NAME AND ADDRESS OF APPLICANT:

**GREAT EASTERN MUSSEL FARMS INC.  
P.O. Box 141  
Long Cove Road  
Tenants Harbor, ME 04860**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**56 Mussel Farm Road  
Tenants Harbor, Maine 04860**

COUNTY: **Knox County**

RECEIVING WATER/CLASSIFICATION: **Tidewaters of St. George, Class SB**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER:

**Mr. David Preston  
Quality Control Manager  
(207) 372-6317**

e-mail: [gemdave@midcoast.com](mailto:gemdave@midcoast.com)

**1. APPLICATION SUMMARY:**

- a. Application: Great Eastern Mussel Farm (GEMF) has submitted a timely and complete application to the Department of Environmental Protection (Department hereinafter) for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0023124/Department Waste Discharge License (WDL) #W003993-5P-C-R (permit hereinafter), that was issued by the Department on July 10, 2002 for a five-year term. The 7/10/02 permit authorized GEMF to discharge of up to 0.72 million gallons per day (MGD) of mussel and clam processing waste waters and facility cleanup waste water and purge tank processing waste water to tidewaters of Long Cove, Class SB, in St. George, Maine. See Attachment A of this Fact Sheet for a location map.

**1. APPLICATION SUMMARY: (cont'd)**

- b. Facility operation & source description: The facility processes mussels from bulk suppliers and packages the live shellfish for consumption at the retail level. Mussels are purged of sand, silt and grits, and other foreign objects before washing, grading, debyssing, and packaged on ice for distribution. Waste water is generated from the purging, washing, grading, and packaging operations. Additionally, facility cleanup waste water is also generated.
- c. Waste Water Treatment: Process waste waters receive treatment primarily by means of settling basins and screened drains. The purge tanks contain a one foot thick screened basin beneath the mussel holding cells. The settling portion of the basins contain a ½ inch screen that allows solids to fall below the mussel holding cells. Initially, mussels delivered to the facility are placed in one of five purge tanks and allowed to reside in the tank for up to 24 hours, during which time the mussels evacuate grit, sands, and silts contained within the mussel shells. The solids are retained in the screened area and periodically removed from the system and used in a land composting process. Process wastewater is generated by the debyssing, declumping, and cleaning operations. Waste water generated is conveyed to a settling basin that has a design residence time of two hours. GEMF has installed a rotary screen drum that separates a fraction of the solids from the wastewater flow before it reaches the settling basin. The rotary screen drum has a screen that has 1/16 inch holes separated by a solid area that results in holes 1/8 inch on center. Solids are removed by the rotary screen drum and directly conveyed to a truck for transport to the composting site. Solids that accumulate within the settling tank are periodically removed from the system and conveyed to the composting truck. See Attachment B of this Fact Sheet for a water use schematic and a schematic of the waste water treatment process.

The 24-inch diameter outfall pipe extends approximately 10 feet from the shoreline into Long Cove where it is just under water at low tide. The outfall contains six – 6 inch diameter orifices to enhance the mixing characteristics of the discharge with the receiving water.

Based on compliance inspections and a review of monthly Discharge Monitoring Report (DMR) data submitted to the Department for the period July 2002 through July 2007, pollutant loadings in the purge water and the clam room waste waters are considered by the Department to be *de minimus*. However, the purge waters are included in the flow reporting requirements and included in mass calculations utilized to determine compliance with this permit.

## 2. PERMIT SUMMARY

- a. Terms and conditions: This permitting action is carrying forward all the terms and conditions of previous permitting action with a few exceptions. This permit;
1. Eliminating limitations and monitoring requirements for total residual chlorine.
  2. Establishing more stringent monthly average technology based mass limitations (617 lbs/day down to 430 lbs/day) for both biochemical oxygen demand (BOD and total suspended solids (TSS) based on pollutant loadings associated with the process waste waters only.

- b. History: The most recent relevant regulatory actions include:

*July 28, 1982* -- The Department issued WDL #3993 for a five-year term. The WDL approved the discharge of up to 0.050 MGD of primary (settling trough) treated waste water from the mussel packaging facility.

*November 28, 1984* – The Department issued a renewal of WDL #3993 for a five-year term. The WDL authorized the discharge of up to 0.060 MGD of process wastewater and up to 0.50 MGD of purge tank wastewater.

*May 1, 1987* – GEMF requested approval to discharge wastewater that contained a chlorine residual during certain times of the year (when there is an occurrence of red tide [paralytic shellfish poisoning] in Long Cove, when stormwater runoff closes shellfish harvesting and chlorinated freshwater from a municipal water supply is used in the processing, when mussels are imported “from away”, and when chlorine is used to disinfect intake waters or when effluent is being disinfected).

*August 20, 1987* – The Department modified the 11/28/84 WDL by authorizing the discharge of chlorinated waste water.

*September 27, 1987* – An appeal of the 8/20/07 WDL modification was filed by Scott Vaitones, representing the Adhoc Committee on Coastal Preservation of St. George, requesting that the decision be reversed based on the risk of chlorine discharges or spills to the ecology of Long Cove.

*November 24, 1987* – The Board of Environmental Protection affirmed the 8/20/07 WDL modification approving the discharge of chlorinated waste water.

## **2. PERMIT SUMMARY: (cont'd)**

*July 30, 1996* – The Department issued WDL renewal W003993-WA-B-R for a five year term.

*July 30, 1996* – The EPA issued NPDES permit #ME0023124 for five-year term.

*January 12, 2001* – The Department received authorization from the EPA to administer the NPDES program in Maine. From that point forward, the program has been referred to as the Maine Pollutant Discharge Elimination System (MEPDES) and MEPDES permit numbers have been utilized as the primary reference for permittee's.

*July 10, 2002* – The Department issued combination MEPDES permit #ME0023124/WDL #W0030993-5P-C-R for a five-year term.

*July 10, 2007* - GEMF submitted a timely and complete application to the Department to renew the 7/10/02 MEPDES permit/WDL.

## **3. CONDITIONS OF PERMITS**

Maine law, 38 M.R.S.A. Section 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, 38 M.R.S.A., Section 420 and Department rule 06-096 CMR Chapter 530, *Surface Water Toxics Control Program*, require the regulation of toxic substances not to exceed levels set forth in Department rule 06-096 CMR Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants*, and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

## **4. RECEIVING WATER QUALITY STANDARDS**

Maine law, 38 M.R.S.A., Section 469 classifies the marine waters of Long Cove, (Tenants Harbor) in the Town of St. George, Maine as a Class SB waterway. Maine law, 38 M.R.S.A., Section 465-B(2) describes the classification standards for Class SB waterways.

## **5. RECEIVING WATER QUALITY CONDITIONS:**

The State of Maine 2004 Integrated Water Quality Monitoring and Assessment Report, prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, indicates that the Maine Department of Marine Resources (DMR) shellfish Area #28, *Marshall Point to Tenants Harbor, St George*, is closed to the harvesting of shellfish. See Attachment C of this Fact Sheet for the delineation of Area #28. The DMR has traditionally closed shellfish harvesting areas in the vicinity of outfall pipes when lack of field data on bacteria counts in the immediate area is insufficient, inconclusive or exceeds standards set in the National Shellfish Sanitation Program of the U.S. Department of Health and Human

## 5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

Services. DMR does not have sufficient field data for Area #28 to open it at this time. The Department has determined the

GEMF facility will not cause or contribute to the closure of the shellfish harvesting area as all sanitary waste waters generated by the facility are conveyed to a holding tank that is periodically pumped by a local septage hauler and disposed of in accordance with local and State regulatory requirements.

All estuarine and marine waters in Maine are listed in a table entitled, *Category 4-B-3: Estuarine and Marine Waters Impaired by Atmospheric Deposition of Mercury* of the aforementioned 305(b) report. Text in this category states that all waters in the category are partially supporting fishing (fish and shellfish consumption) due to elevated levels of mercury, PCBs and dioxin in tissues of some fish and lobster tomally. The Department is not aware of any information that the GEMF facility is discharging PCBs or dioxin that may be causing or contributing to the partial non-attainment. As for mercury, Department rule Chapter 519, *Interim Effluent Limitations and Controls for the Discharge of Mercury*, establishes controls on the discharge of mercury to the surface waters of the State through interim effluent limits and implementation of pollution prevention plans.

## 6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- a. Flow: The previous permitting action established a daily maximum flow limitation of 0.72 MGD (720,000 gpd) based on the collective flow estimates of the process wasters (debyssing and mussel and clam washing) clean-up waste waters and purge waters. The process waste waters and clean-up waters are currently estimated to be approximately 0.50 MGD with the purge waters fluctuating on any given day up to 0.22 MGD for a total of 0.72 MGD. The daily maximum limitation of 0.72 MGD is being carried forward in this permitting action as it remains representative of what is actually being discharged to the receiving waters. A review of the monthly DMR data for the period April 2005 – March 2007 indicates the daily maximum flow reported has ranged from 0.417 MGD to 1.158 MGD with an arithmetic mean of 0.68 MGD while the monthly average flow discharged for the same period has ranged from 0.274 MGD to 1.134 MGD with an arithmetic mean of 0.54 MGD. It is noted these flow values include purge water quantities discharged.
- b. Dilution Factors: The previous permitting action established acute and chronic dilution factors as follows:

Acute = 1:1

Chronic = 61:1

## 6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

The dilution factors were established by the Department utilizing a permit flow limitation of 0.72 MGD, a desktop model and plan and profile information about the outfall provide by the permittee. It is noted the acute dilution factor is 1:1 as a result of the outfall being exposed a mean low tide. Department Regulation Chapter 530 Surface Water Toxics Control Program, §4(a)(2) promulgated on October 12, 2005 (subsequent to the previous permit) states:

- (1) *For estuaries where tidal flow is dominant and marine discharges, dilution factors are calculated as follows. These methods may be supplemented with additional information such as current studies or dye studies.*
  - (a) *For discharges to the ocean, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis, and at mean tide for the chronic exposure analysis using appropriate models determined by the Department such as MERGE, CORMIX or another predictive model.*
  - (b) *For discharges to estuaries, dilution must be calculated using a method such as MERGE, CORMIX or another predictive model determined by the Department to be appropriate for the site conditions.*
  - (c) *In the case of discharges to estuaries where tidal flow is dominant and marine waters, the human health criteria must be analyzed using a dilution equal to three times the chronic dilution factor.*

The dilution factors from the previous permitting action are being carried forward from the previous permitting action. In a site visit on October 25, 2007, the permittee conveyed to the Department it is actively pursuing an outfall pipe reconfiguration to enhance mixing of the discharge with the receiving water. If and when the outfall pipe is modified, the Department is amenable to recalculating the dilution factors and modifying them accordingly if appropriate.



## 6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

- c. Biochemical oxygen demand (BOD) and total suspended solids (TSS) - The Department establishes pollutant specific limitations in permits based on ambient water quality criteria/standards or best practicable treatment (BPT) technology based criteria whichever is more stringent. The previous permitting action established technology based limitations for BOD and TSS based on a Department best professional judgment of the facilities past demonstrated performance based on a review of the DMR data for the period 1996-2002. The Department considered this methodology appropriate given the Code of Federal Regulations (CFR) Title 40, Part 408 references BPT for canned and preserved seafood processing, but not for fresh, live, mechanized mussel processing.

The 7/10/02 permitting action established the monthly average mass limitations of 617 lbs/day for both parameters based on 50 percent of the value of the mass discharges allowed in the 7/30/96 WDL. The 50% reduction from the 7/30/96 WDL was based on a review of the DMR data for the period 7/96 – 7/02. The Department made a best professional judgment that the facility was performing much better than expected and made the decision to reduce the mass limitations accordingly.

With the monthly average mass limitations established, the Department back-calculated concentration limits that represent BPT for this particular facility based on the daily maximum flow limitation of 0.72 MGD. The calculation is as follows:

$$\frac{617 \text{ lbs/day}}{(8.34 \text{ lbs})(0.72 \text{ MGD})} = 103 \text{ mg/L}$$

Given the Department's determination that the purge water (0.22 MGD) has a *de minimus* quantity of pollutants in it this permitting action is carrying forward the BPT concentration limit of 103 mg/L, and reducing the monthly average mass limits for BOD and TSS to 430 lbs/day based on process waste water flows of 0.50 MGD. Supporting calculations are as follows:

$$0.50 \text{ MGD}(8.34 \text{ lbs/gal})(103 \text{ mg/L}) = 430 \text{ lbs/day}$$

A review of the monthly DMR data for the period April 2005 – March 2007 indicates the following:

	<u>BOD Mass (lbs/day)</u>	<u>BOD Concentration (mg/L)</u>
	<u>Monthly Avg.</u>	<u>Monthly Avg.</u>
Range	10 - 88 lbs/day	4 – 30 mg/L
Arithmetic mean	50 lbs/day	14 mg/L
	<u>TSS Mass (lbs/day)</u>	<u>TSS Concentration (mg/L)</u>
	<u>Month Avg.</u>	<u>Monthly Avg.</u>
Range	51 – 1,279 lbs/day	20 – 158 mg/L
Arithmetic mean	376 lbs/day	83 mg/L

## 6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

- d. Total Residual Chlorine: The previous permitting action established a daily maximum water quality based concentration limit of 0.013 mg/L based on the acute AWQC and a dilution factor of 1:1. The limit was established in the permit based on the fact the permittee indicated it utilized sodium hypochlorite in its cleaning operations. Limits on total residual chlorine (TRC) are specified to ensure that ambient water quality standards are maintained and that best practicable treatment is being applied to the discharge. Water quality based thresholds for TRC may be calculated from the water quality based acute and chronic criterion of 0.013 and 0.0075 mg/L, respectively.

Acute (A) Criterion	Chronic (C) Criterion	Dilution Factors (A) (C)		Calculated Acute Limit	Calculated Chronic Limit
0.013 mg/L	0.0075 mg/L	1:1	79:1	0.013 mg/L	0.59 mg/L

The Department has established a daily maximum best practicable treatment limitation of 0.3 mg/L for facilities that need to dechlorinate their effluent unless calculated water quality based limits are lower than 0.3 mg/L. In the case of GEMF, the calculated acute water quality based limits were lower than 0.3 mg/L, therefore the calculated acute water quality based limit of 0.013 mg/L was established in the previous permit. A review of the monthly DMR data of the period April 2005 – March 2007 indicates the daily maximum concentration of TRC was reported 0.0 mg/L for the entire period.

Given the facility has never reported a detected level of TRC, the Department inquired into disinfection practices at the facility during the 10/25/07 site visit. GEMF personnel indicated the normal practice is to prepare 2 gallons of a dilute solution of sodium hypochlorite (100 mg/L) in a fully contained spray canister and sprayed onto machinery and conveyor belts at the end of each processing day. The solution is not washed off the machine but is allowed to set overnight to maximize its disinfect capabilities. Even if ½ of the material sprayed onto the equipment were to be discharged to the process sewer at full strength (100 mg/L) and co-mingled with purge water alone (process waste waters would not be generated during cleaning) the daily maximum limitation of 0.013 mg/L would be achieved with a dilution factor of 7,692. The calculation is as follows:

$$\frac{100 \text{ mg/L}}{0.013 \text{ mg/L}} = 7,692$$

## 6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

With 1 gallon of solution and a dilution factor of 7,692:1, approximately 7,700 gallons of purge water would need to be available to meet the permit limit. With a daily flow rate of 220,000 gallons/day or 336 gallons per minute (based on a 10-hour shift), sufficient dilution to meet the permit limit would be provided for within 23 minutes. The calculation is as follows:

$$\frac{220,000 \text{ gallons/shift}}{600 \text{ minutes/shift}} = 336 \text{ gallons/min}$$

$$\frac{7,700 \text{ gallons required}}{336 \text{ gallons/min}} = 23 \text{ minutes}$$

Given the extensive quantity of TRC test results (n=1,200) on file at GEMF all indicating 0.0 mg/L, the disinfection practice of spraying the dilute sodium hypochlorite onto equipment and not actively washing the equipment and the calculations provided above and in the unlikely event of a spill or release of the solution at full strength from the machinery, the Department has made a BPJ that a TRC limitation and monitoring requirement are no longer necessary. Therefore, the daily maximum limit and 5/Week monitoring requirement in the previous permit are not being carried forward in this permitting action and are no longer warranted.

- e. pH Limits: The previous permitting erroneously establish a pH range of 6.0 – 9.0 standard units. The Fact Sheet of the permit indicated the limitation was based on Department Rule Chapter 525, Section 3(III). The limits in said citation were established as BPT for publicly owned treatment works not food processing facilities. Therefore, this permitting action is correcting error by establishing a pH range limitation of 6.0-8.5 as pursuant to a BPJ of BPT determination by the Department. A review of the monthly DMR data of the period April 2005 – March 2007 indicates the pH range limit of 6.0 -8.5 standard units has never been exceeded.
- f. Settleable solids – The 7/10/02 permit established a daily maximum concentration limit of 0.3 ml/L based on what the Department considered BPT at the time. Between July 2002 and January 2005, GEMF experienced a number of excursions of the settleable solids limit. On February 18, 2005, the Department modified the 7/10/02 permit by revising the daily maximum limit to 1.0 mg/L. See the explanation for said modification in the Department's 2/18/05 modification. The revised limit of 1.0 mg/L is being carried forward in this permitting action and is considered BPT for the GEMF facility.

A review of the monthly DMR data of the period April 2005 – March 2007 indicates the daily maximum concentration for settleable solids was reported as ranging from <0.1 ml/L to 0.8 ml/L with an arithmetic mean of 0.25 ml/L.

## **6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)**

- g. Production: The previous permitting action established a daily production reporting requirement to evaluate the level of production and provides an indicator proxy on the level of pollutant discharges that GEMF generates and discharges over time. The reporting requirement is being carried forward in this permitting action.

A review of the monthly DMR data for the period April 2005 – March 2007 indicates the monthly average production has ranged from 11,986 lbs/day to 21,143 lbs/day with an arithmetic mean of 15,010 lbs/day. As for the daily maximum, the DMR data for said period indicates the ranged has been from 17,150 lbs/day to 49,300 lbs/day with an arithmetic mean of 25,124 lbs/day.

## **7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY**

As permitted, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the waterbody to meet standards for Class SB classification.

## **8. PUBLIC COMMENTS**

Public notice of this application was made in the Rockland Courier Gazette newspaper on or about July 12, 2007. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

## **9. DEPARTMENT CONTACTS**

Additional information concerning this permitting action may be obtained from and written comments should be sent to:

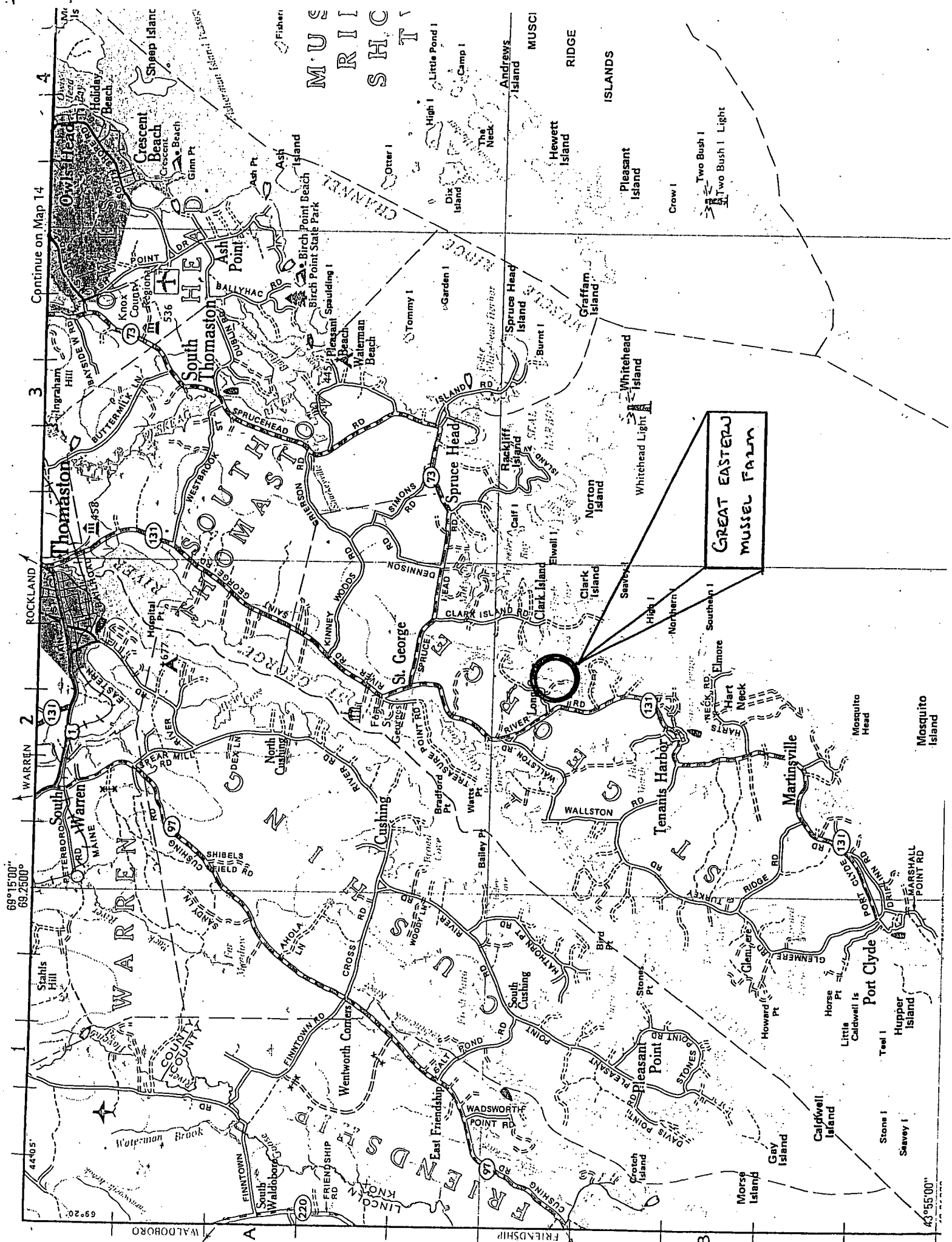
Gregg Wood  
Division of Water Quality Management  
Bureau of Land and Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017  
E-mail: [gregg.wood@maine.gov](mailto:gregg.wood@maine.gov)

Telephone (207) 287-7693

## **10. RESPONSE TO COMMENT**

During the period of September 21, 2007, through the issuance date of the permit/license, the Department solicited comments on the proposed draft permit/license to be issued for the discharge(s) from the GEMF operation. The Department did not receive comments from the permittee, state or federal agencies or interested parties that resulted in any substantive change(s) in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.

# **ATTACHMENT A**



69°15'00"  
69°25'00"

43°55'00"

Continue on Map 14

GREAT EASTERN  
MUSSEL FARM

MUSSEL  
RIE  
SHO

MUSC  
RIDGE  
ISLANDS

WARREN

SOUTH THOMASTON

TENANTS HARBOR

MARTINSVILLE

PORT CLYDE

CALDWELL ISLAND

MOSQUITO ISLAND

STONE I

SAVEY I

HUPPER ISLAND

TEEL I

LITTLE CALDWELL IS

HORSE PT

HOWARD PT

CLANFORD

GLANFORD

GLANFORD

GLANFORD

GLANFORD

ELMORE

HART NECK

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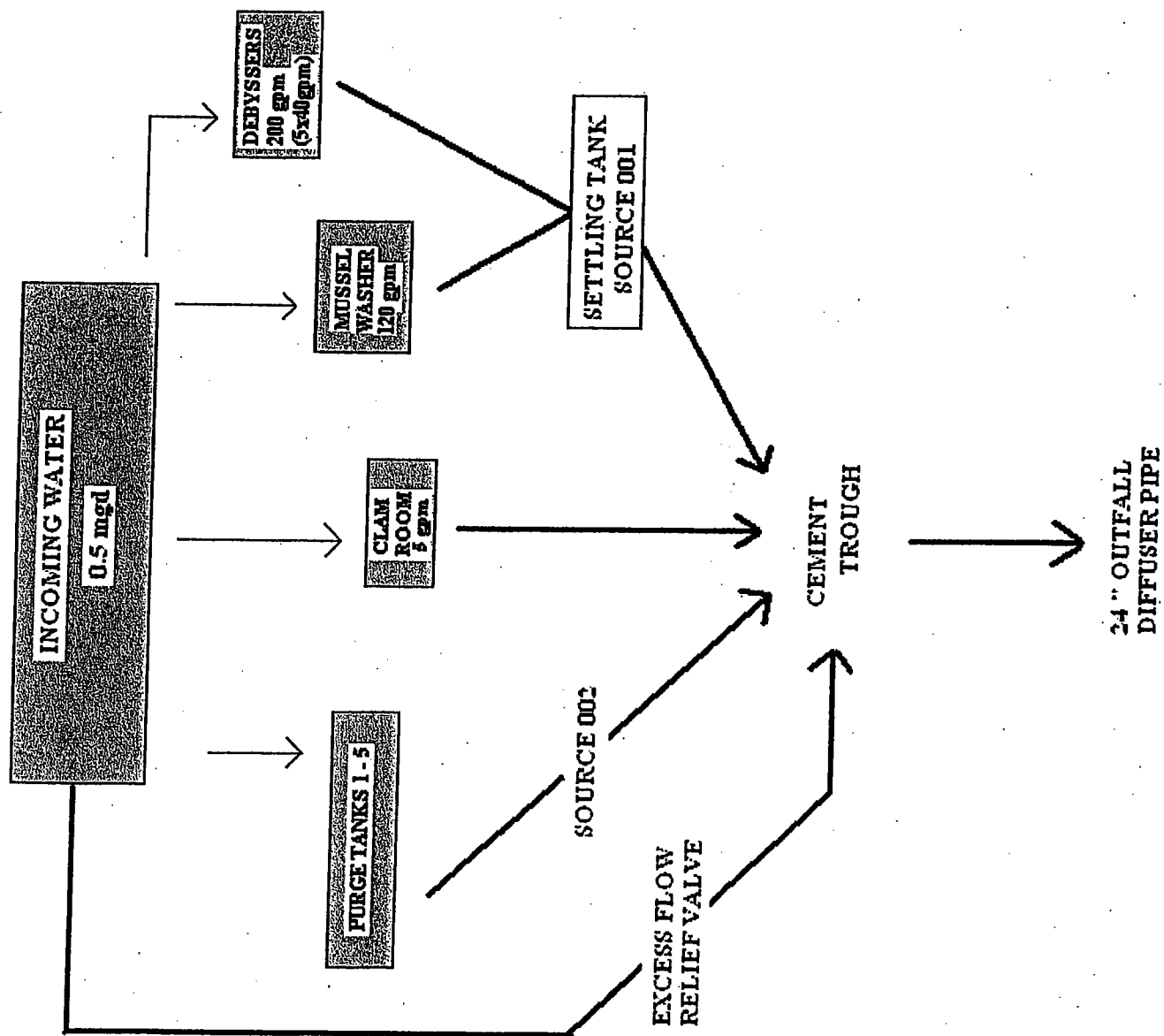
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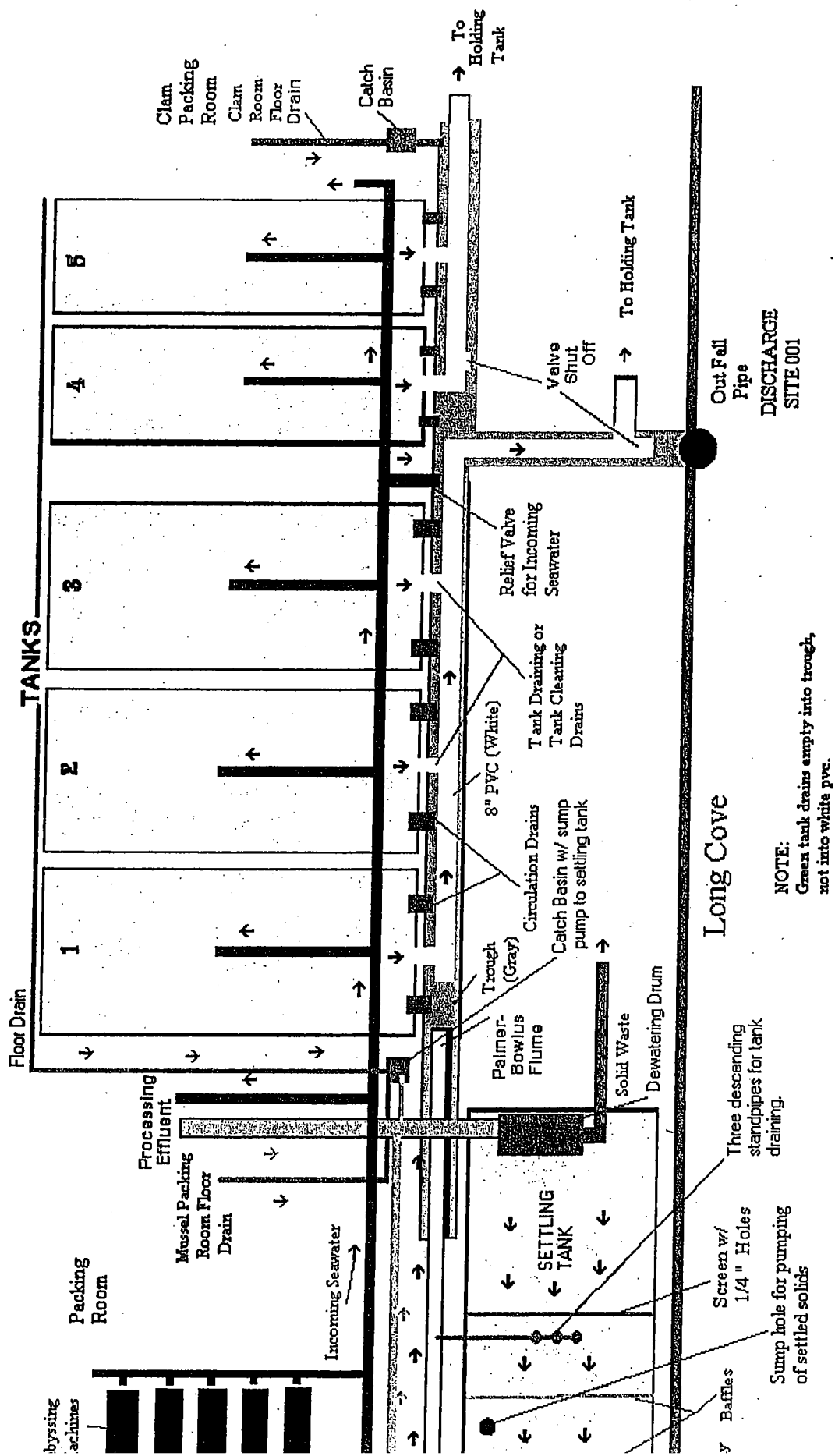
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## **ATTACHMENT B**







# **ATTACHMENT C**

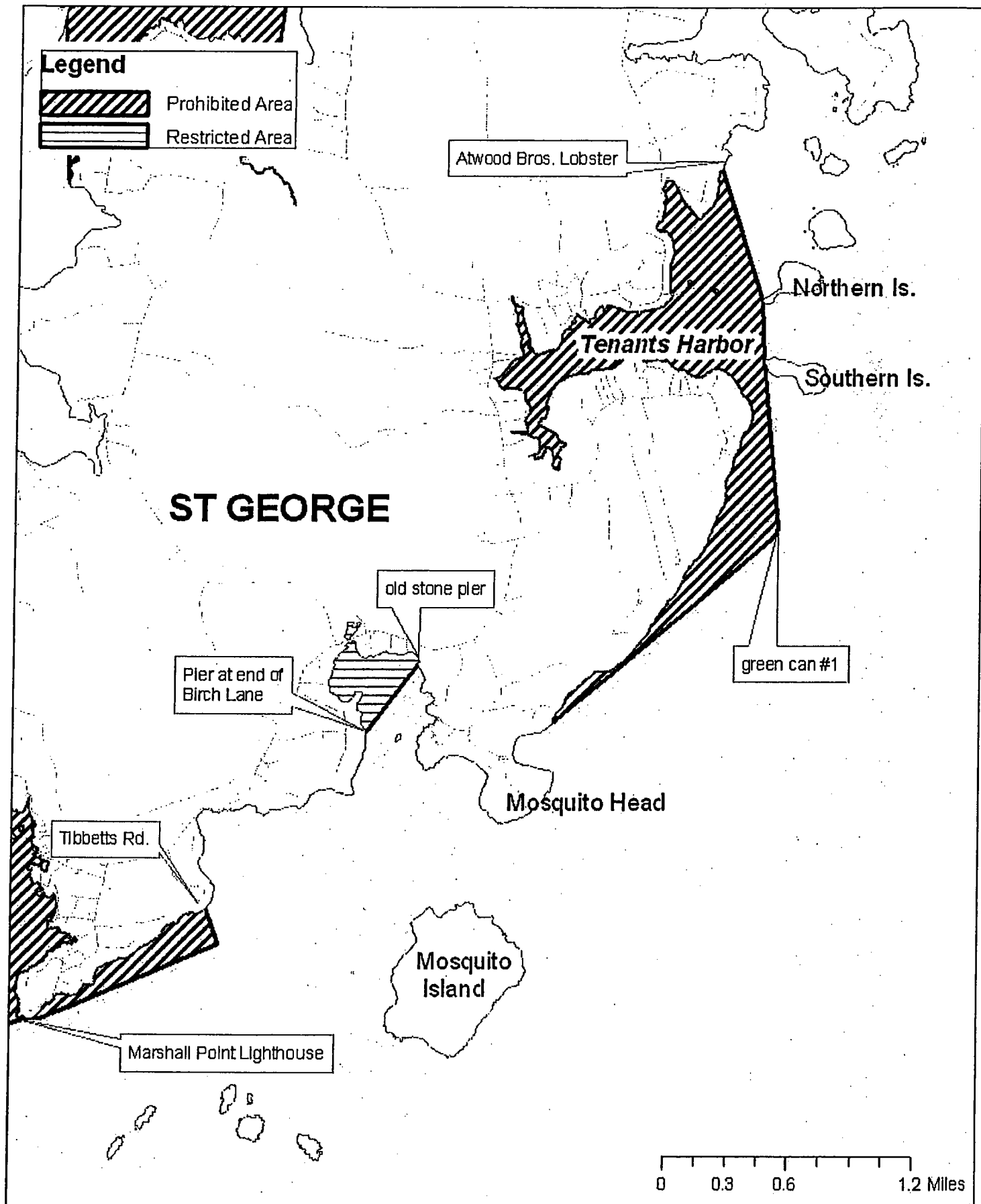


# Maine Department of Marine Resources

## Pollution Closed Area No. 28 5/1/07



Marshall Point to Tenants Harbor, St George



MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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### A. GENERAL PROVISIONS

1. **General compliance.** All discharges shall be consistent with the terms and conditions of this permit; any changes in production capacity or process modifications which result in changes in the quantity or the characteristics of the discharge must be authorized by an additional license or by modifications of this permit; it shall be a violation of the terms and conditions of this permit to discharge any pollutant not identified and authorized herein or to discharge in excess of the rates or quantities authorized herein or to violate any other conditions of this permit.

2. **Other materials.** Other materials ordinarily produced or used in the operation of this facility, which have been specifically identified in the application, may be discharged at the maximum frequency and maximum level identified in the application, provided:

(a) They are not

- (i) Designated as toxic or hazardous under the provisions of Sections 307 and 311, respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law; or
- (ii) Known to be hazardous or toxic by the licensee.

(b) The discharge of such materials will not violate applicable water quality standards.

3. **Duty to comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of State law and the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

- (a) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act, and 38 MRSA, §420 or Chapter 530.5 for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- (b) Any person who violates any provision of the laws administered by the Department, including without limitation, a violation of the terms of any order, rule license, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.

4. **Duty to provide information.** The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.

5. **Permit actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

6. **Reopener clause.** The Department reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedule of compliance or other provisions which may be authorized under 38 MRSA, §414-A(5).

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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7. **Oil and hazardous substances.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject under section 311 of the Federal Clean Water Act; section 106 of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980; or 38 MRSA §§ 1301, et. seq.

8. **Property rights.** This permit does not convey any property rights of any sort, or any exclusive privilege.

9. **Confidentiality of records.** 38 MRSA §414(6) reads as follows. "Any records, reports or information obtained under this subchapter is available to the public, except that upon a showing satisfactory to the department by any person that any records, reports or information, or particular part or any record, report or information, other than the names and addresses of applicants, license applications, licenses, and effluent data, to which the department has access under this subchapter would, if made public, divulge methods or processes that are entitled to protection as trade secrets, these records, reports or information must be confidential and not available for public inspection or examination. Any records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any applicable federal law, and to any party to a hearing held under this section on terms the commissioner may prescribe in order to protect these confidential records, reports and information, as long as this disclosure is material and relevant to any issue under consideration by the department."

10. **Duty to reapply.** If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

11. **Other laws.** The issuance of this permit does not authorize any injury to persons or property or invasion of other property rights, nor does it relieve the permittee of its obligation to comply with other applicable Federal, State or local laws and regulations.

12. **Inspection and entry.** The permittee shall allow the Department, or an authorized representative (including an authorized contractor acting as a representative of the EPA Administrator), upon presentation of credentials and other documents as may be required by law, to:

- (a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

## B. OPERATION AND MAINTENANCE OF FACILITIES

### 1. General facility requirements.

- (a) The permittee shall collect all waste flows designated by the Department as requiring treatment and discharge them into an approved waste treatment facility in such a manner as to

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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maximize removal of pollutants unless authorization to the contrary is obtained from the Department.

- (b) The permittee shall at all times maintain in good working order and operate at maximum efficiency all waste water collection, treatment and/or control facilities.
- (c) All necessary waste treatment facilities will be installed and operational prior to the discharge of any wastewaters.
- (d) Final plans and specifications must be submitted to the Department for review prior to the construction or modification of any treatment facilities.
- (e) The permittee shall install flow measuring facilities of a design approved by the Department.
- (f) The permittee must provide an outfall of a design approved by the Department which is placed in the receiving waters in such a manner that the maximum mixing and dispersion of the wastewaters will be achieved as rapidly as possible.

**2. Proper operation and maintenance.** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

**3. Need to halt or reduce activity not a defense.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

**4. Duty to mitigate.** The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

### **5. Bypasses.**

#### (a) Definitions.

- (i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- (b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this section.

#### (c) Notice.

- (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.



MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph D(1)(f), below. (24-hour notice).

(d) Prohibition of bypass.

(i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph (c) of this section.

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(ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (d)(i) of this section.

**6. Upsets.**

(a) Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (c) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated; and

(iii) The permittee submitted notice of the upset as required in paragraph D(1)(f), below. (24 hour notice).

(iv) The permittee complied with any remedial measures required under paragraph B(4).

(d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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### C. MONITORING AND RECORDS

**1. General Requirements.** This permit shall be subject to such monitoring requirements as may be reasonably required by the Department including the installation, use and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods). The permittee shall provide the Department with periodic reports on the proper Department reporting form of monitoring results obtained pursuant to the monitoring requirements contained herein.

**2. Representative sampling.** Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. If effluent limitations are based wholly or partially on quantities of a product processed, the permittee shall ensure samples are representative of times when production is taking place. Where discharge monitoring is required when production is less than 50%, the resulting data shall be reported as a daily measurement but not included in computation of averages, unless specifically authorized by the Department.

#### **3. Monitoring and records.**

- (a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (b) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.
- (c) Records of monitoring information shall include:
  - (i) The date, exact place, and time of sampling or measurements;
  - (ii) The individual(s) who performed the sampling or measurements;
  - (iii) The date(s) analyses were performed;
  - (iv) The individual(s) who performed the analyses;
  - (v) The analytical techniques or methods used; and
  - (vi) The results of such analyses.
- (d) Monitoring results must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in the permit.
- (e) State law provides that any person who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any order, rule license, permit approval or decision is subject to the penalties set forth in 38 MRSA, §349.

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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### D. REPORTING REQUIREMENTS

#### 1. Reporting requirements.

- (a) Planned changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
  - (i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or
  - (ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D(4).
  - (iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;
- (b) Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- (c) Transfers. This permit is not transferable to any person except upon application to and approval of the Department pursuant to 38 MRSA, § 344 and Chapters 2 and 522.
- (d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.
  - (i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices.
  - (ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department.
  - (iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit.
- (e) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
- (f) Twenty-four hour reporting.
  - (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

- (ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

- (A) Any unanticipated bypass which exceeds any effluent limitation in the permit.
- (B) Any upset which exceeds any effluent limitation in the permit.
- (C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.

- (iii) The Department may waive the written report on a case-by-case basis for reports under paragraph (f)(ii) of this section if the oral report has been received within 24 hours.

- (g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this section.
- (h) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

**2. Signatory requirement.** All applications, reports, or information submitted to the Department shall be signed and certified as required by Chapter 521, Section 5 of the Department's rules. State law provides that any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any order, rule, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.

**3. Availability of reports.** Except for data determined to be confidential under A(9), above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department. As required by State law, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal sanctions as provided by law.

**4. Existing manufacturing, commercial, mining, and silvicultural dischargers.** In addition to the reporting requirements under this Section, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe:

- (a) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - (i) One hundred micrograms per liter (100 ug/l);
  - (ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
  - (iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
  - (iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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- (b) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - (i) Five hundred micrograms per liter (500 ug/l);
  - (ii) One milligram per liter (1 mg/l) for antimony;
  - (iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
  - (iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

#### **5. Publicly owned treatment works.**

- (a) All POTWs must provide adequate notice to the Department of the following:
  - (i) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA or Chapter 528 if it were directly discharging those pollutants.
  - (ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
  - (iii) For purposes of this paragraph, adequate notice shall include information on (A) the quality and quantity of effluent introduced into the POTW, and (B) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.
- (b) When the effluent discharged by a POTW for a period of three consecutive months exceeds 80 percent of the permitted flow, the permittee shall submit to the Department a projection of loadings up to the time when the design capacity of the treatment facility will be reached, and a program for maintaining satisfactory treatment levels consistent with approved water quality management plans.

#### **E. OTHER REQUIREMENTS**

**1. Emergency action - power failure.** Within thirty days after the effective date of this permit, the permittee shall notify the Department of facilities and plans to be used in the event the primary source of power to its wastewater pumping and treatment facilities fails as follows.

- (a) For municipal sources. During power failure, all wastewaters which are normally treated shall receive a minimum of primary treatment and disinfection. Unless otherwise approved, alternate power supplies shall be provided for pumping stations and treatment facilities. Alternate power supplies shall be on-site generating units or an outside power source which is separate and independent from sources used for normal operation of the wastewater facilities.
- (b) For industrial and commercial sources. The permittee shall either maintain an alternative power source sufficient to operate the wastewater pumping and treatment facilities or halt, reduce or otherwise control production and or all discharges upon reduction or loss of power to the wastewater pumping or treatment facilities.

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**2. Spill prevention.** (applicable only to industrial sources) Within six months of the effective date of this permit, the permittee shall submit to the Department for review and approval, with or without conditions, a spill prevention plan. The plan shall delineate methods and measures to be taken to prevent and or contain any spills of pulp, chemicals, oils or other contaminants and shall specify means of disposal and or treatment to be used.

**3. Removed substances.** Solids, sludges trash rack cleanings, filter backwash, or other pollutants removed from or resulting from the treatment or control of waste waters shall be disposed of in a manner approved by the Department.

**4. Connection to municipal sewer.** (applicable only to industrial and commercial sources) All wastewaters designated by the Department as treatable in a municipal treatment system will be cosigned to that system when it is available. This permit will expire 90 days after the municipal treatment facility becomes available, unless this time is extended by the Department in writing.

**F. DEFINITIONS.** For the purposes of this permit, the following definitions shall apply. Other definitions applicable to this permit may be found in Chapters 520 through 529 of the Department's rules

**Average** means the arithmetic mean of values taken at the frequency required for each parameter over the specified period. For bacteria, the average shall be the geometric mean.

**Average monthly discharge limitation** means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. Except, however, bacteriological tests may be calculated as a geometric mean.

**Average weekly discharge limitation** means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

**Best management practices ("BMPs")** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

**Composite sample** means a sample consisting of a minimum of eight grab samples collected at equal intervals during a 24 hour period (or a lesser period as specified in the section on monitoring and reporting) and combined proportional to the flow over that same time period.

**Continuous discharge** means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

**Daily discharge** means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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**Discharge Monitoring Report ("DMR")** means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by approved States as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

**Flow weighted composite sample** means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

**Grab sample** means an individual sample collected in a period of less than 15 minutes.

**Interference** means a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

- (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- (2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

**Maximum daily discharge limitation** means the highest allowable daily discharge.

**New source** means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

- (a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or
- (b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

**Pass through** means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

**Permit** means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of 40 CFR parts 122, 123 and 124. Permit includes an NPDES general permit (Chapter 529). Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

**Person** means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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**Point source** means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

**Pollutant** means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or byproducts, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

**Process wastewater** means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

**Publicly owned treatment works ("POTW")** means any facility for the treatment of pollutants owned by the State or any political subdivision thereof, any municipality, district, quasi-municipal corporation or other public entity.

**Septage** means, for the purposes of this permit, any waste, refuse, effluent sludge or other material removed from a septic tank, cesspool, vault privy or similar source which concentrates wastes or to which chemicals have been added. Septage does not include wastes from a holding tank.

**Time weighted composite** means a composite sample consisting of a mixture of equal volume aliquots collected over a constant time interval.

**Toxic pollutant** includes any pollutant listed as toxic under section 307(a)(1) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing section 405(d) of the CWA. Toxic pollutant also includes those substances or combination of substances, including disease causing agents, which after discharge or upon exposure, ingestion, inhalation or assimilation into any organism, including humans either directly through the environment or indirectly through ingestion through food chains, will, on the basis of information available to the board either alone or in combination with other substances already in the receiving waters or the discharge, cause death, disease, abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in such organism or their offspring.

**Wetlands** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

**Whole effluent toxicity** means the aggregate toxic effect of an effluent measured directly by a toxicity test.





# DEP INFORMATION SHEET

## Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

### SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### **LEGAL REFERENCES**

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

#### **HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD**

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

#### **WHAT YOUR APPEAL PAPERWORK MUST CONTAIN**

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

#### **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

#### **WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD**

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

#### **II. APPEALS TO MAINE SUPERIOR COURT**

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

#### **ADDITIONAL INFORMATION**

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

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**Note:** The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.

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